at present irreconcilably divided upon the subject; and if Mr. Gladstone seeks to reunite his disorganized ranks by yielding to the views of his secularist allies, we have no doubt that the country will refuse to ratify his decision. Meanwhile it is our duty to wait patiently, and not seek to gain any temporary triumph or partial success. We cannot too earnestly enforce upon our friends the wise advice which Lord Derby gave in his recent speech at Manchester:—

'Let no man on our side of politics be cast down or disheartened because the last general election gave a majority of 100 against the Conservative cause. The question is not what the last general election did, but what the next will do. We are pretty well used, or ought to be, to the ups and downs of political conflict. Why, gentlemen, in 1832, after the Reform Bill, the Conservative party was swept clean and clear out of Parliament. There is no other word to describe their situation at that time; and yet, as you have been reminded to-night, within five years they again presented a compact and powerful Opposition, and within less than ten years from that time of utter prostration and defeat they commanded in the House of Commons a majority of ninety. Never doubt, therefore, that the opportunity will come to you soon or late. That is not the main question. The main question is, when the opportunity comes, we should be prepared to use it wisely. Let there be no haste, no eagerness to snatch at any merely temporary and casual success. And above all, if I may venture to give such a hint, let us take care not to allow ourselves to be made to any extent the tools of the ambition or of the discontent of extreme politicians on the other side. I tell you what I mean. It may very likely be the game of the Radical party to try and turn out the present Ministry if they can, and to put a Conservative Government in its place, that Conservative Government being in a minority, hoping that by so doing they shall be able to reconstruct their own party upon a new platform, pledged to more extreme and more violent measures, and then to have a Cabinet formed of the most thorough-going Radicals. These may be their tactics. But just because it is their game it ought not to be ours.'

ART. IX.—1. *The Case of the United States, to be laid before the Tribunal of Arbitration to be convened at Geneva.*

2. *Case presented on the part of the Government of Her Britannic Majesty to the Tribunal of Arbitration constituted under Art.* 1 *of the Treaty concluded at Washington on the* 8*th of May,* 1871, *between Her Britannic Majesty and the United States of America.*

THE American Case, drawn up for the information of the Geneva tribunal, starts with the assumption that, in the course

course of many transactions with Great Britain, the United States have displayed a very moderate and conciliatory spirit; that American rights, which might have been pressed, have often been given up; that the settlement of the boundary of the State of Maine was one example of American moderation, and that the settlement of the Oregon boundary in 1846 was another. It is worth while to quote the passage in which these views are expressed. The Case sets out by declaring that from no people had the people of America a better right to expect a just judgment than from the people of Great Britain, and it goes on to enumerate some considerations in support of this statement:—

'In 1812 they were forced into war with Great Britain by the claim of that power to impress seamen on the high seas from vessels of the United States. After three years the war ceased, and the claim has never since been practically enforced. In 1818 they met British negotiators more than half way in arranging disputed points about the North American Fisheries. In 1827, having added to their own right of discovery the French and Spanish titles to the Pacific coast, they voluntarily agreed to a joint occupation of a disputed portion of this territory rather than resort to the last arbitrament of nations. In 1838, when a serious rebellion prevailed in Canada, the congress of the United States, at the request of Great Britain, passed an Act authorising the Government to exercise exceptional powers to maintain the national neutrality. In 1842 the Government of the United States met a British envoy in a spirit of conciliation, and adjusted by agreement the disputed boundary between Maine and the British possessions. In 1846 they accepted the proposal of Great Britain, made at their own suggestion, to adopt the 49th parallel as a compromise line between the two Columbias, and to give to Great Britain the whole of Vancouver's Island.'

This passage, in all probability, represents fairly enough the view of Anglo-American diplomacy, popular in the United States. Nevertheless almost every statement thus put forward is untrue, while some convey an idea diametrically the reverse of the truth. Unhappily the years from 1815 to 1850 are the dark ages of politics. Their events are too old to be remembered—too fresh to be recorded in history. But for this, the authors of the Case could hardly have been misled by erroneous impressions so far as to venture on the assertions quoted above. As they have thus ventured, however, and as nothing can be more desirable than that the British Nation should at this crisis correctly appreciate the lessons of our past diplomatic relations with America, we propose to invade the obscurity of the last fifty or sixty years and to exhibit the real nature of those half-forgotten transactions, on account of which the United States now claim from us a grateful acknowledgment of their generosity.

It

It is worth while to notice that even with regard to the war of 1812—into the causes of which it would be beside our present purpose to enter—the language of the Case is inaccurate, and the implied charge against this country unfair. The American people were not 'forced into war' in 1812 by the claim of England to impress seamen on the high seas from vessels of the United States. We claimed the right to search American merchantmen for deserters from the British navy, and never advanced any claim in reference to impressment; and though some British naval officers were overbearing and aggressive, their worst acts were promptly disavowed and made the subject of apologies.*

The Orders in Council, which had originally given rise to the disputes between this country and the Americans, were repealed by us before Congress declared war in 1812; and the United States, in going to war, presented the odd spectacle of a nation attacking another to exhale feelings of anger, the principal justification of which had passed away.

But passing over this episode in our relations with America, we venture to assert that from the treaty of Ghent to the present day all important disputes between the two countries have ended, not only in settlements favourable to the United States, but in the actual surrender by Great Britain of advantages to which she has established sound and equitable claims. Such claims she has several times abandoned, in the hope of securing the friendship of America or for the sake of averting imminent danger of war.

Let us examine first the story of the Maine boundary.† The treaty of Paris of 1783, recognising the independence of the United States, defined a boundary between British and American territory from the Atlantic to the Rocky Mountains. At that time, it is well to remember, no claim was advanced on behalf of the new republic for any territory west of the Rocky Mountains. The line was appointed to run as follows:—

'From the north-west angle of Nova Scotia, viz., that angle which is formed by a line drawn due north from the sources of St. Croix River to the highlands; along the said highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean to the north-westernmost head of Connecticut River; thence along the middle of that river to

* It was shown in the 'Quarterly Review' for July, 1833, that Great Britain *never impressed an American, knowing him to be such.*

† To avoid the repeated quotation of authorities in the text we may refer the reader for all facts in the next few pages to the great debate in the House of Commons on the Ashburton Treaty that took place on the 21st of March, 1843, and to Mr. G. W. Featherstonhaugh's 'Observations upon the Treaty of Washington, signed 9th August, 1842.' Also to an article which appeared in the 'Quarterly Review,' for March, 1843.

the 45th degree of north latitude; from thence, by a line drawn due west on the said latitude, until it strikes the River Irroquois, &c., &c.

The boundary is then traced through the great lakes, but we need not follow it so far west at present. The eastern boundary is further defined in these words:—

'East, by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic from those which fall into the River St. Lawrence, &c., &c.'

Thirty years after these confused and ungrammatical sentences were written when British and American plenipotentiaries were again assembled, this time at Ghent, in 1814, to adjust terms of peace at the close of the war, the country lying about the sources of the St. Croix River was already a disputed territory. As far back as 1792 the settlers in Maine, exploring the country between the Bay of Fundy and the St. Lawrence, a region that was but imperfectly known at the time the treaty of 1783 was concluded, had advanced the claim that afterwards became the subject of the celebrated boundary dispute. They asserted that the highlands mentioned in the treaty were to be found far away in the north—north of the sources of the St. John River. A glance at a map will render easily intelligible the geographical references we are compelled to make. If the boundary had been traced along these highlands it would have given the United States almost the whole of the country lying between the Bay of Fundy, of which the treaty certainly seemed to contemplate a more equal division. The British Government refused to admit the justice of the claim, but while the country in dispute was thinly peopled, it is to be presumed the question was carelessly disregarded. At all events no attempt at its permanent settlement seems to have been made prior to the year 1814, when the conferences at Ghent began. Taking advantage of this favourable opportunity the British Commissioners proposed to settle a boundary through the disputed territory upon the principle of mutual advantage and security, without attempting to interpret the strict letter of the treaty of 1783. The American Commissioners, however, replied that they had no authority to 'cede' territory belonging to the United States, thus striking the keynote which has guided the United States Government ever since in all territorial disputes. The English theory to the effect that the territory claimed by the settlers of Maine was really British territory, and not territory belonging to the United States at all, was calmly ignored by the American Commissioners. It will

will be seen, as we advance, that the American claim utterly broke down under close examination; but nevertheless the Americans insisted from the first upon the doctrine that their claim to any land was a *primâ facie* proof that it was theirs, and that the subsequent surrender of any portion of it to Great Britain was a 'cession.' With better logic, but with inferior cunning, the British Government, though convinced that the disputed territory was ours, treated it as disputed territory, and thus permitted the American Government to obtain the full advantage of the assumption with which it unwarrantably started.

The Ghent negotiations for an absolute settlement of the boundary having failed, it was arranged in the treaty that a joint-commission should be appointed to search for a boundary in accordance with the terms of the treaty of 1783. In the event of disagreements between the Commissioners, their rival reports were to be referred to arbitration. Disagreements arose at the very outset of the survey. The Commissioners differed as to which was the head of the St. Croix River. Our Commissioners claimed a western arm; the Americans one to the eastward. The difficulty was referred to arbitration, and decided against us. In the course of the survey many other disputes became the subject of arbitrations. These were all given in our favour, and thus bore testimony to the fair spirit by which the British representatives were animated. Under these circumstances it is impossible to treat as of no importance the fact that the one case where they were declared to be wrong, was the one case in which the arbitrator was an American citizen. The decision was afterwards described in the House of Commons as having been clearly unjust, but the British Government never demurred to its validity.

The importance of this dispute was entirely overwhelmed by that of a more serious disagreement which subsequently arose. The English Commissioners discovered a range of highlands which answered to a description of the treaty, in latitude 46° 40′. But the American Commissioners objected. They claimed that the due north line should be carried on to about latitude 48°, and that the boundary should then be carried westward along a range of highlands close to the River St. Lawrence. This point was considered of sufficient moment to be made the subject of reference to a foreign sovereign, and by a special convention signed in 1827 it was referred together with two other points of disagreement to the King of the Netherlands.

The two minor points are worth notice. The questions were, —which was the north-western head of the Connecticut River? and

and which was the 45th parallel of latitude? In reference to this last question, our readers may be at a loss to imagine how a scientific fact could be disputed. The explanation is amusing, and at the same time indicative of the spirit in which the American Government managed its diplomacy. In 1818 English and American astronomers had been appointed to lay down the 45th parallel along that part of the boundary which it was required to define. And they laid it down to their own mutual satisfaction. English and American representatives agreed with one another for this once. But it turned out that an old inter-colonial boundary which was supposed to have been traced along the 45th parallel was inaccurately laid down. The true line lay half a mile or a mile further south. This discovery disconcerted the American Government, which had regarded the little strip of territory between the two lines as its own, and had, indeed, begun to erect a fortification on the shores of Lake Champlain, on land which astronomers now declared to be British ground. The American Government therefore set to work to discover a plea on which the verdict of the stars could be impugned. Their diligence was rewarded. They found that if parallels of latitude were determined by geocentric measurement, the parallel of 45 degrees, in consequence of the oblate formation of the earth, would be pushed back again towards the north. They therefore declared in favour of geocentric measurement. To do them justice they grew ashamed of this argument by the time the case went before the King of the Netherlands, and developed another theory, but both the minor questions referred to in the convention of 1827 were decided in our favour.

In reference to the principal question, the King declared that no definite decision could be given—that neither the highlands claimed by Great Britain nor the highlands claimed by the United States corresponded with the description given in the treaty. Further examination of the country, as we shall presently see, led to the discovery of facts which, if they had been before the King of the Netherlands in 1827, might probably have induced him to give a plain decision in our favour, but his actual verdict was that a compromise line ought to be adopted, and he traced a compromise line which he considered to be fair. No sooner was this decision published than the American Minister at the Hague, Mr. Prebble, a citizen of Maine, protested against it. He said the King had no right under the terms of the conference to compromise the dispute. The English Government regretted the compromise, and considered it extremely unfavourable to us, but bowed loyally to the

the arbitration, and prepared to carry it out. The American Government, on the other hand, demurred, and after some delay, in 1829 finally rejected and repudiated the arbitration. After some attempts of a rather Quixotic character to induce the American Government in the general interests of good faith to reconsider its resolution, the English Government gave up the point a year or two later, and consented to regard the arbitration as null and void.

By degrees, as geographical information relating to the territory in dispute accumulated in the hands of the British Government, our case became enormously strengthened. In 1839 we sent out two surveyors, Colonel Mudge and Mr. Featherstonhaugh, to examine the country. Their report, and another procured in 1841, determined various facts. The point at which the American Commissioners had declared that the due north line ought to stop, and the boundary be diverted to the west, turned out not to be in a range of highlands at all, but in a marshy plain. The highlands selected to suit American views of what the boundary ought to have been, had to be sought some distance to the westward. Secondly, these highlands did not divide rivers flowing into the St. Lawrence from rivers flowing into the Atlantic, unless it were assumed that the St. John was a river flowing into the Atlantic. Now the King of the Netherlands, in his arbitration had, at all events, confirmed our opinion concerning the true character to be attributed to the River St. John. It flows into the Bay of Fundy, and for the purposes of the treaty of 1783, the Bay of Fundy is not a part of the Atlantic Ocean. So we always contended, and so the King of the Netherlands declared. The common sense of that view will appear to anyone who examines the map. The St. John stretches across the whole country lying between the Atlantic and the St. Lawrence. It is the only river which does this, whereas there are many shorter streams flowing from the central highlands into the St. Lawrence on the north, and into the Atlantic on the south. Moreover, even as the boundary was proposed by the Americans, the lower course of the St. John must still have lain within British territory. According to the interpretation which this government clearly proved to be fair and reasonable, no part of the St. John would ever have belonged to the United States at all. The river should have been left out of the calculations of the commissioners altogether; and it certainly was not an Atlantic river under the terms of the treaty. This was our contention, and this was the view distinctly confirmed by the King of the Netherlands. The utter worthlessness of the American claim in reference to the northern range of highlands will now be apparent.

apparent. The highlands we claimed, on the other hand, were proved by the examination made by Colonel Mudge and Mr. Featherstonhaugh to be, in fact, all that the treaty required them to be. They were struck by the due north line, and they were continuous from that line to the head waters of the Connecticut, a merit not possessed by the northern range, which soon sank into the plain as it was followed to the westward, leaving the boundary to be carried across a level country for twenty-five miles. Finally, our highlands did indisputably divide streams flowing into the St. Lawrence from streams flowing into the Atlantic Ocean.

We are thus precise in explaining the points that were really at issue in the boundary dispute, because the interest of these negotiations, regarded from our present point of view, centres in the spirit shown by the American Government, and this cannot rightly be appreciated unless the merits of the controversy are understood.

It will be seen that when Lord Ashburton was appointed by Sir Robert Peel in 1842 to proceed as British plenipotentiary to Washington, and settle various outstanding difficulties with the American Government, the dispute concerning the Maine boundary was one in which any government tenacious of its rights, and occupying our position, would have refused to yield. Our claim was not one through which we grasped at a neutral territory. The dispute, to describe it accurately, was one in which the American Government claimed territory that was ours by virtue of the spirit of the treaty, by virtue of the letter of the treaty, as that letter was understood by ourselves, and by a neutral arbiter, and also by actual occupation; for though Maine settlers had pushed their way far north, the country lying about the Madawaska River, one of the tributaries of the St. John, had long been in permanent occupation of a community, partly British, partly French Canadian, which viewed with extreme apprehension and displeasure the prospect of being transferred to the Government of the United States. The American claim was a manifest encroachment. The line of highlands they wished to make the boundary failed in all particulars to fulfil the description of the treaty. No Government, therefore, occupying the position in reference to this dispute in which the American Government stood, could have continued to assert its claims without being animated by a stronger determination to obtain the object of its desire than to effect a just settlement of the question at issue.

But the practical conclusion to which the British Government came on giving their instructions to Lord Ashburton evidently was,

was, that it was not worth while to assert our rights at the cost of a war with the United States. The excitement in America was very great. The people of Maine openly declared that they would fight for the northern boundary if they did not obtain a favourable settlement. Public opinion in this country, where the question at stake was too intricate to be popularly understood, would not have sanctioned a war with America for the sake of a boundary dispute on the frontiers of Canada. The consequence was that Lord Ashburton, finding the alternatives before him were war, or the surrender of our territorial rights, chose to make the surrender. He agreed to a compromise line not diverging very much from that suggested thirteen years previously by the King of the Netherlands. We are not by any means apologising for his diplomacy; and it is quite possible that by a little better management he might have secured somewhat more favourable terms, even while still avoiding that rupture of our ostensibly amicable relations with America which the British Government was so anxious to avert. Lord Ashburton was an amateur diplomatist, whom Mr. Daniel Webster, the American Secretary of State, circumvented in many ways. The treaty which he concluded was an ignominious treaty, not inaccurately described in the political controversies of the time as a 'capitulation.' But it was defended by Sir Robert Peel, on the ground that a few hundred thousand, a few million acres of territory were of no consequence compared to securing the friendship of the United States. It may be open to discussion whether a great nation can ever give way before an unrighteous demand, and practically in deference to menace, without incurring some ultimate penalty: but without going into that question just now, we may here be content to take note of the broad facts that in the Maine boundary dispute the English claim was substantiated in the negotiations; that the Americans showed themselves resolved to precipitate hostilities if their claim was not conceded; and that to avoid going to war, the British Government yielded what it had clearly shown to be its just rights.

One episode connected with the Ashburton negotiations may be noticed here for the light it helps to throw on the principles of American diplomacy. Thirty years ago it was the subject of much excited controversy. We allude to the famous map scandal, the facts of which were as follows:—after the treaty negotiated by Lord Ashburton and Mr. Webster had been signed, and during the debate which took place in the American Senate prior to the ratification, Mr. Rives, a member of that body, arguing in favour of the ratification, made a very remarkable statement. He warned the Senate not to reject the treaty

treaty on the ground that it did not give the American Government all it had claimed, because, if the Maine boundary question went to another arbitration, it was possible that further researches in the archives of Europe might bring to light some embarrassing document likely to throw new doubts on the validity of the American claim. Indeed, he said such a document had already been discovered. Mr. Jared Sparks, a Boston historian, while pursuing historical researches in the archives of the Foreign Office at Paris, had discovered a letter from Benjamin Franklin—one of the American negotiators of the treaty of 1783—to the Count de Vergennes referring to a map on which he had marked the boundary just settled by the treaty, with 'a strong red line.' A map which corresponded to the references in the letter was also found by Mr. Jared Sparks among the beautifully arranged papers of the department in which he had discovered the letter, and on the map he beheld—with surprise and consternation as an American citizen—a strong red line marking the boundary exactly as claimed by the British Government. This discovery he communicated to the American Department of State, and the knowledge of these facts—the private and secret knowledge of these facts—was in possession of Mr. Daniel Webster during his negotiations with Lord Ashburton. Efforts were made subsequently to show that no positive evidence identified the map found as the map referred to in the letter to the Count de Vergennes, but of this no one concerned seems to have had any moral doubt. Secondly, it was contended by Sir Robert Peel, who did his best to defend the honour of Mr. Webster, that, taking all the facts as they were alleged, Mr. Webster was not bound to produce testimony adverse to his own case. Finally, that Lord Ashburton also had a map—one preserved in the Library of George III. if we understand Sir Robert Peel's explanation rightly—on which the boundary was marked as claimed by the Americans, and that he refrained from putting this map in evidence during the negotiations. The two reservations, however, were not parallel. The map of which Lord Ashburton had cognizance was, a map of no special authority. How a boundary line came to be marked upon it nobody seems to have known. In the Foreign Office, meanwhile * there was a map showing the boundary according to the British claim. Lord Ashburton was undoubtedly justified in discarding his map as of no substantial importance. How far Mr. Webster was equally justified on his side is a subject about which different opinions will be formed.

* Lord Palmerston's speech.

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The authority of the map brought to his knowledge was certainly very great; all but overwhelming. That map was, at the very least, to quote the language of Senator Rives, an embarrassing document. It seems clear that Mr. Webster, representing the American Government in the negotiations with Lord Ashburton, must, at any rate, have thrown overboard all thoughts of procuring a *just* settlement of the dispute. He struggled to obtain, not that to which he thought he had a right, but all he thought it possible to procure by defeating the rights of others.

Besides disposing of the Maine boundary question, Lord Ashburton's treaty settled a dispute that had arisen in connexion with our efforts for the suppression of the slave trade. Although the negotiations connected with our territorial difficulties in Oregon will claim attention directly as constituting a natural sequel to those on the Maine boundary, it is worth while to notice that, even in reference to this minor dispute growing out of the African slave trade, the usual rule which has governed our diplomacy with the United States was observed. The position we took up at the outset of the difficulty was simple and reasonable; our claims were substantiated by convincing despatches, and, in the end, we gave way through fear of the consequences that might ensue if we refused.

By the treaty of Ghent the American Government had subscribed to a promise that they would use their best endeavours to promote the entire abolition of the slave trade. The British Government, in order that the collective strength of humane nations might be employed against the trade to the best advantage, endeavoured to persuade all the powers to adopt a mutual right of search. In 1824 a treaty to this effect was drawn up by British and American plenipotentiaries, but it was never ratified, owing to a desire on the part of the United States Government to vary the geographical limits to which it referred. Our Government protested against the principle of varying a treaty on its ratification, and the negotiations fell through. In 1831 and 1833 we concluded treaties giving us a mutual right of search, with France. But the disposition of the American Government changed. It is not necessary to trace the explanation. The state of the question in 1842 was that the British Government had been pressing the United States to accept the right of search in vain. Meanwhile peculiar difficulties had arisen on the African coast. Without a mutual right of search with America we could not interfere with American slavers, and we never claimed to do this. But it constantly happened that, in endeavouring to elude pursuit, slavers of other nationalities hoisted the American flag. What

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our naval officers contended was that, whatever flag might be hoisted, they had at least a right to board vessels and ascertain that they really belonged to the nationality whose ensign they employed. Of course the American Government had nothing to say to any treatment we might bestow on foreign vessels hoisting the American flag fraudulently; but they advanced a claim that must, if recognized, have paralysed the action of our anti-slave trade squadron. They declared that, under no circumstances, must American vessels be even visited and asked their nationality by British naval officers. The mere act of inquiry they professed to regard as an outrage. It was manifest that, if this extravagant and wantonly obstructive claim were admitted, the consequences would be fatal to the success of our humane enterprise on the African coast. If our officers were bound under no circumstances to visit an American vessel it was clear that they could not venture to go on board any doubtful vessel with the American flag, lest she might be American. This was repeatedly pointed out in despatches to Mr. Stevenson, the American Minister in London; and both Lord Palmerston and Lord Aberdeen made it clear that we did not claim to interfere in any way with those rights which the United States Government reserved in refusing to concede the mutual right of search.* With quiet irony Lord Palmerston observed in one despatch:—

'The cruisers employed by Her Majesty's Government for the suppression of the slave trade must ascertain by inspection of the papers the nationality of vessels met with by them under circumstances which justify a suspicion that such vessels are engaged in the slave trade, in order that if such vessels are found to belong to a country which has conceded to Great Britain the mutual right of search, they may be searched accordingly, and that if they be found to belong to a country which, like the United States, has not conceded that mutual right, they may be allowed to pass on free and unexamined, and so consummate their intended iniquity.'

It can scarcely be said that the American minister during any part of this negotiation advanced any argument to justify the unfriendly and obstructive attitude that the United States Government had taken up. Indeed it would have been impossible for him to show that the simple right of visit or inquiry which we claimed, not in our own interests, but in those of humanity, was either injurious or insulting to American commerce. It was no new right which we sought to enforce; we merely wished to follow an established custom, the application of which to

* The correspondence is partly republished in the 'Annual Register.'

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American vessels subjected them to no inconvenience or annoyance worth speaking of, while it was absolutely essential to the efficient police of the seas. As we said in reference to the Maine boundary question, so we may say again in reference to this difficulty concerning the right of visit, the circumstances under which we were placed were such that any government, tenacious of its rights and occupying the position in which we were placed, would have refused to yield. On the other hand, the circumstances under which the American Government was placed were such that any government, moderately forbearing in disposition, would certainly have given way in a similar situation. But the actual course of events was this:—By the treaty of 1842 the British Government bowed to the exorbitant claims of the Government of the United States, and consented that the American merchant marine should be invested with a quasi-sacred character, belonging, according to Lord Aberdeen, to the vessels of no other nationality. In return for this somewhat ignominious concession the American Government undertook to station a force of its own on the African coast, so that doubtful vessels with an American flag might be overhauled by American men-of-war. This inadequate arrangement was held for the sake of peace to be a satisfactory compromise of the dispute.

Lord Ashburton effected no settlement of the Oregon question. Our difficulty with the United States concerning the limits of British and American jurisdiction in the west, proved, however, no less threatening to the peace of the two countries than the questions affecting the boundary at its eastern extremity. The territorial claims of the United States to country west of the Rocky Mountains seem first to have been put forward at the conferences which took place in London subsequent to the Treaty of Ghent.* If we go back to the time of the treaty of 1783, it will be found that the United States sought no empire beyond the Rocky Mountains. But in 1818 enlarged views had already dawned upon the minds of American statesmen. Feeling their way by degrees, the American representatives in London, at the date we mention, proposed that England and America should come to an understanding concerning the territory west of the Rocky Mountains. The United States, they said, 'did not assert a perfect right' to any of that territory, an admission which they could hardly have avoided making at the time, but one which it is worth while to remember in connexion with the subsequent progress of the negotiations. To meet the views of the United States, England agreed to a convention, signed in October, 1818,

* The Oregon question is discussed at length in the 'Quarterly Review' for March, 1846.

recognising

recognising a joint occupancy. The convention laid down this understanding:—

'The country to the west of the Rocky Mountains claimed by either party, with its bays, harbours, navigation of rivers, &c., shall be free and open for ten years to the two powers, it being well understood that this agreement shall not prejudice any claim of either party, or of any other power or state to any part of the said country, the only object of the parties being to prevent disputes and differences among themselves.'

Nine years afterwards, in 1827, this convention, which had then almost expired, was indefinitely renewed, with a clause to the effect that it should be terminable by one year's notice from either side. It is greatly to be deplored that the British Government did not foresee at an earlier period the desirability of marking out beyond dispute the limits of its own territorial jurisdiction in the west. But in 1827 it was already too late. By that time America had made up her mind concerning the boundary she meant to have. It was proposed by the American Government that the line should be carried along the 49th parallel of latitude to the sea. Great Britain objected, on the ground that British subjects had a perfect right to colonise down to the 42nd parallel. But the United States conceived the idea that they had acquired claims of vast extent over territory west of the Rocky Mountains, through treaties with the republic of Mexico, then newly emancipated from Spanish control. We may more conveniently examine the value of these claims in connexion with some others subsequently advanced. For the moment let us be content to take cognizance of the offers made on each side. During the negotiations carried on,—by Mr. Gallatin on behalf of the United States,—prior to the renewal of the joint convention, the rival claims roughly assumed the shape in which they continued to confront one another up to the conclusion of the final treaty in 1846. The British Government expressed its readiness to accept the 49th parallel as the boundary along the greater part of the line. But from the point at which that parallel should strike the Columbia River, Great Britain required that the boundary should follow the course of that river to the Pacific. The United States insisted that the 49th parallel should be the boundary all the way to the sea. At one time the United States offered us the navigation of the Columbia River, but afterwards this offer was withdrawn.

It should be borne in mind that although the dispute was thus narrowed to a conflict of claims for the country lying between the Columbia River, the Pacific coast, and the 49th parallel of latitude, the rights of the English Government, which we consented to

to waive, would have given this country an equally good case had we claimed a very much more favourable boundary. If Great Britain had not carelessly—or generously as the case may be—entered into the joint-occupancy convention, it might have established an admirable right to all western territory north of Mexico. As it was, the joint-occupancy convention certainly conferred rights on the United States. But those rights could only extend to a claim for the just and equitable division of the great western regions. Such a division would probably have carried the boundary line several degrees farther south than the 49th parallel.

The refusal of the British Government to give up the territory north of the Columbia River rendered Mr. Gallatin's negotiations abortive, and, for want of a better settlement, the joint-occupancy convention was, as we have seen, renewed. The Oregon question, however, had now been formally established. The more America pondered over the controversy, the more essential to her happiness became the territory between the Columbia River and the 49th parallel. When President Polk came into office in 1845, he declared himself embarrassed by the offers made by his predecessors, or he would have 'gone for the whole of Oregon,' that is to say for the whole territory where England had originally enjoyed an exclusive right, where she had consented to admit the United States to joint privileges of colonisation, and where the United States now endeavoured to show that she had no right whatever. In April, 1846, the Senate passed a resolution calling upon the President to give notice, under the convention of 1827, that America desired to terminate the joint occupation. This resolution was passed, after excited debates calculated to add weight to the menace it involved. Numerous indications showed that the American people were resolved to attempt the seizure of the territory they desired by force, if they could not obtain it by diplomacy. It was growing manifest that once more the British Government was to be placed in a position in which it would have an opportunity of showing how much it preferred the friendship of the United States, to a few hundred thousand—a few million acres of territory.

In the course of a diplomatic correspondence of some length, which passed in 1845, between Messrs. Calhoun and Buchanan on behalf of America, and Mr. afterwards Sir Richard Pakenham, the British Minister at Washington, on behalf of Great Britain, the rival arguments of the Oregon question are set forth in detail. The claim of the United States was ranged under three heads:—

1st.

1st. The rights of Spain conveyed to the United States by the Florida treaty.

2nd. The rights of France purchased with Louisiana.

3rd. The rights acquired by the United States by settlement and discovery.

The rights of Spain were really non-existent, except in the imagination of American diplomatists. Sir Francis Drake was the earliest navigator on the coast in dispute. In 1579 he discovered the land in lat. 48°, coasted down to about 38°, and went through the form of taking possession of the country in the name of his sovereign. For a long time the region was called by the name he gave it, New Albion. No very early Spanish navigator went so far north as Drake, and vague as the British claims on New Albion may have been in the last century, they were undoubtedly acknowledged to exist. In 1774 a Spanish naval expedition from Mexico touched at San Diego, in California, and then stood out to sea, giving a wide berth to all country that could possibly be considered New Albion, afterwards touching the land again well to the north of Drake's discoveries in lat. 53° 50′. In 1775 another Spanish expedition, under a Dr. Heceta, sailing along the coast, observed, about lat. 46°, a great bay, the head of which could not be seen, but which Heceta believed, from the evidence of its currents and eddies, to be the mouth of some great river or passage to another sea. This bay must have been the mouth of the Columbia River, and the United States diplomatists, to lose no advantage open to them, grounded one of their claims to the valley of the Columbia River, settled though it was by British subjects, on the theory that Heceta had discovered the mouth of the stream, that Spain had thus obtained territorial rights over the country it watered, and that these rights had been ceded to the United States by the treaty of Florida. The exquisite beauty of this claim is still further enhanced by the fact that the treaty of Florida itself was never ratified by Spain, which Power distinctly rejected the convention. It was taken as ratified by the United States, in spite of this little informality, and eventually it received such legal sanction as was possible under the circumstances from the revolted republic of Mexico.

Spain never promulgated Heceta's discoveries as the basis of any territorial claim, apparently respecting the British rights to New Albion. But England was animated by no jealous policy in reference to the Pacific coasts of America, and when a difficulty arose in 1789, between British and Spanish subjects in Nootka Sound, the British Government merely exacted a convention acknowledging that the coast north of the existing Spanish

Spanish settlements was free and open for the purposes of colonisation to the subjects of both countries. It might have been supposed that this Nootka Sound convention would have laid at rest for ever all idea of exclusive Spanish sovereignty north of San Francisco, and even American writers find it, like Franklin's map in the Maine controversy, 'an embarrassing document.' But they endeavour to get over it in this way.* Wars between States cancel their mutual treaties. Great Britain was at war with Spain in 1796, therefore the validity of the Nootka Sound convention expired. It is triumphantly pointed out that it was not renewed by the treaty of Madrid. It happens, however, that the Nootka Sound treaty was one of a class of treaties explicitly revived in 1815, but independently of all such technical points, its importance in the Oregon controversy consists in this,—that it was an acknowledgment of a state of facts, not a treaty calling any new relations between the parties signing it into existence.

What has been called the French claim to Oregon, obtained by the Americans through the purchase of Louisiana, is almost too extravagant to be worth examination. Louisiana never thought of claiming, nor did France or Spain ever claim for her 'the slightest colour of right to any portion of the western side of the North American continent.'† The claims of the United States, by settlement and discovery, are a little more complicated, but they will be found on examination to break down no less thoroughly.

Vancouver, the most industrious explorer of the coasts in the neighbourhood of the island that bears his name, landed, in 1792, on the shores of the great bay called Admiralty Inlet, and took formal possession of the country in the name of the King of England, reviving the name New Albion. Accounts of this proceeding were published without exciting any comment either from Spain or the United States, in 1801. Meanwhile, in the same year, an American, Captain Gray, of Boston, in a vessel called the 'Columbia,' discovered the river now known by that name. It is alleged that he proceeded up the stream first ten miles, when he took in fresh water, and then fifteen miles further, when he found he had taken a wrong channel and had to return. There are some odd circumstances connected with Captain Gray's adventures. That there was such a person is certainly vouched for by Vancouver, who did receive from him information of the existence of the river. But all the details of the discovery rest on the authority of an alleged extract from Captain Gray's log, first produced in a note to a report on the Oregon question drawn up by a committee of the House of Representatives in 1826. This

* Greenhow. † 'Quarterly Review,' March, 1846.

log had never before been heard of, and has since unaccountably disappeared.* The case is one calculated to excite suspicion even as it stands, but a singular circumstance remains to be recorded. Captain Gray, according to the mysterious extract, took in fresh water from the river when he had sailed up it for ten miles. It is a fact that the water of the Columbia River is salt for twenty miles up its course. However, brushing all these doubts aside, and giving the Americans credit for everything alleged to have been done by Gray, it remains impossible to defeat the British claims on the Columbia by reliance on his exploits, for Vancouver's narrative shows that an English vessel, the 'Jenny,' Captain Baker, entered the river in the early part of the same year that it was visited by Gray. There is no evidence to show whether Captain Baker or Captain Gray was the first discoverer. In any case the commander of the 'Chatham,' Vancouver's tender, Lieut. Broughton, was the first white man who fairly worked his way up the stream for any distance. Sent by Vancouver to examine the river, he ascended it for eighty-four miles from its true mouth, which he places higher up the bay than Captain Gray, and formally took possession in the name of the King of England. Vancouver declares, judging from this survey, that Captain Gray never was within five leagues of the entrance of the river.

The American claim to the valley of the Columbia by right of discovery is thus shown to be as weak technically, as it would be weak morally, if Captain Gray's exploit stood alone. For the theory that the Power whose flag is identified with the discovery of the mouth of a river, can on that account claim exclusive dominion over the whole country which it drains, is so extravagant as to be refuted by its own mere expression in plain language. But the United States did not rely, in arguing its claim, on the discoveries of Captain Gray alone. They appeal to the inland discoveries of Captains Lewis and Clarke, who were sent in 1804 to explore, on behalf of the United States, the upper valley of the Missouri. These travellers struck one of the tributaries of the Columbia during the latter part of their journey, and passed down the river to the sea, wintering on the south bank in 1805-6. American diplomatists lay great stress on this, but again minute research shows the hollowness of their claim. The upper branches of the Columbia had been explored, previous to the arrival of Lewis and Clarke, by Mr. David Thomson, surveyor and astronomer of the British North-West Company. If it were just, as the Americans contend when basing their claims on the discoveries of Lewis, Clarke, and

* Greenhow.

Gray,

Gray, that the first explorers of a river give their country exclusive territorial rights over the region it waters, then the United States are shut out from attributing any importance whatever to the travels of Lewis and Clarke, for Thomson preceded those travellers. Finally, the route followed by Lewis and Clarke lay wholly within the territory that Great Britain was willing to resign to the United States. They entered the Columbia by tributaries on its left bank and south of the 49th parallel. All along that portion of the river which they traversed Great Britain was willing to let the river itself be the boundary-line.

In 1811 a settlement, called Astoria, was established at the mouth of the Columbia river. An American claim, based on this circumstance, may be disposed of in a few words. Astoria was a free trading station—not a colony—set up by nine partners, calling themselves the Pacific Fur Company, of whom three were American and six Scotch. When the war of 1812 broke out, the whole settlement was hastily sold to the North West Company for 58,000 dollars. When the British sloop 'Racoon' arrived to take it from the enemy, it was found to be already British. At the conferences of Ghent the Americans claimed to have it delivered back to them. Great Britain pointed out that it had been bought and paid for; still the United States claimed the sovereignty. With almost fantastic generosity the British Government agreed that, pending negotiations for settling the territorial dominion, the United States flag should be re-established at Astoria in the *status quo ante bellum*. This was done, but Astoria did not pay. The place was deserted, and had ceased to exist before the negotiations of 1845. Finally, Astoria was on the south side of the river, and within the territory that Great Britain was willing to leave in the hands of the United States. Our readers may find it difficult to believe that sober American statesmen could found on the history of Astoria a claim to the whole valley of the Columbia River; but such is the fact nevertheless. We merely refrain from giving extracts from despatches in illustration of the point, to avoid overloading this narrative.

It may, perhaps, be observed, that all purely technical claims of the kind we have here been discussing, are really unimportant when the sovereignty of a newly-settled country has to be decided; and it may be imagined that the territory which was in dispute during the Oregon negotiations was already overrun with American 'pioneers,' and valuable to the United States on that account. But so far was this from being the case, that the settlements of the whole country in dispute were British. Even if the British proposal had been accepted, it would have

been necessary to break up some British settlements south of the Columbia, while there were no American settlements to be disturbed on the north side. On the other hand the American proposal required this country to give up a quantity of settlements, including Fort Vancouver, the depôt of the Hudson's Bay Company; to resign the use of eleven rivers, and to give up all the good harbours of Admiralty Inlet, besides the agricultural district round Puget Sound. Yet this was a proposal that Buchanan described as one showing 'a sincere and anxious desire to cultivate the most friendly relations between the two countries, and to manifest to the world that the United States is actuated by a spirit of moderation.'

As, in dealing with the Maine boundary question, we refrained from a tedious recital of the negotiations carried on by Lord Ashburton, so we need not now follow the details of the diplomacy which was crowned in 1846 with the surrender by Great Britain of all the territory in dispute; of the Columbia River, of the harbours in Admiralty Inlet, and of all the other possessions just enumerated. There is no mystery involved in the surrender. From the tone of the debates in Congress, British statesmen once more perceived that if they wanted to enjoy the continued friendship of the United States, the only way to secure that blessing was to pay for it. They paid for it by giving up a large tract of the most valuable country on the Pacific coast, a tract which was ours by right of ancient claims, by right of prior discovery, prior survey, and prior occupation, and by the actual right of settlement and possession under the authority of treaties as well. Mr. Richard Pakenham was invested with full powers as a plenipotentiary, to conclude a treaty and set the Oregon controversy at rest; and, as his choice lay practically between the surrender of the territory the Americans required, and war, the surrender was duly made and the treaty of 1846 concluded.

This was the treaty out of which the San Juan controversy arose. With a moderation that American statesmen look back upon with pride, the United States consented, when at last this country submitted to the boundary along the 49th parallel, by which she was shut out from the whole valley of the Columbia, that the line should be deflected when it reached the sea-coast, so as not to cut off, as it would have done otherwise, a fragment from the end of Vancouver's Island. When we contemplate the American moderation involved in this deflection of the boundary, from the point of view of 1846, and remember what we gave up on that occasion, we are perhaps less disposed than Americans themselves to admire the self-denial shown in the surrender to us of 'the whole of Vancouver's Island.' The authors of the recently published American Case refer to the manner in which the

the United States agreed in 1846 'to give to Great Britain the whole of Vancouver's Island,' as if the whole continent had originally belonged to the United States, and as if the possession of Vancouver's Island by Great Britain was entirely due to United States' generosity. In reality, we have to thank the people of the United States for Vancouver's Island no more than for Van Diemen's Land or Australia. But to return to facts. The treaty of 1846 defined the boundary on the west coast as follows:—'The line shall be continued westward along the said 49th parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel and of Fuca's Straits to the Pacific Ocean.' Unfortunately the space intervening between Vancouver's Island and the continent is studded with small islands, whose existence the negotiators of the treaty of 1846 ignored. The consequence is, that no one channel can be selected as *the* channel which separates the continent from Vancouver's Island. According to an American map, drawn from surveys taken under the authority of the United States Congress by Colonel, afterwards General J. C. Fremont, the boundary-line was shown running down the channel on the east side of the island of San Juan, known as Rosario Straits. But in 1856, when, after a long delay, for which the American Government is responsible, joint commissioners were appointed to mark out the boundary which had never before been officially determined, the American Commissioner, Mr. Archibald Campbell, insisted that the line ought to run down the Canal de Haro, on the western side of San Juan, giving that island to the United States. In making this claim he was only following up an aggressive movement begun some years before by the legislature of Oregon Territory, which passed an act affecting to include the Haro Archipelago, to which the island of San Juan belongs, in one of the counties of the Territory. In 1854 the legislature of Washington Territory, by that time detached from Oregon, passed a similar act, in accordance with which the property of the Hudson's Bay Company on the island of San Juan was in 1855 assessed by the civil authorities of Washington Territory. The Company naturally refused to pay taxes to a foreign government on account of property which had always been regarded as, and which they still believed to be, situated on British ground. The property in question was then formally advertised and sold by the American authorities, and it was the official correspondence relating to this transaction that at last prompted Congress to appoint a boundary commissioner.

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It seems to be the policy of the American Government never to recede from a claim once put forward in its name, no matter by whom or under what circumstances. Mr. Campbell proved a persevering exponent of this policy. In the course of a long correspondence with Captain Prevost, the British Commissioner, he never swerved from his contention that the Canal de Haro was the channel which best carried out the language and intentions of the treaty. Captain Prevost, on the contrary, became more and more convinced that the boundary-line, to be fairly drawn, must be carried down the Rosaro Strait. Under these circumstances it became wholly impossible for the joint-commission to conclude its task, and its members ultimately reported themselves to their respective Governments as hopelessly at variance.

Before explaining the merits of their controversy it is desirable to say a few words on the importance of the point at issue. Some people may imagine that the possession of a small islet on the Pacific coast is an advantage for which it cannot be worth our while to contend. Viscount Milton, however, who has studied the subject with great care, declares:—'On a just and equitable solution of the so-called San Juan Water-Boundary question depends the future, not only of British Columbia, but also of the entire British possessions in North America.' He goes on to explain that Victoria, the capital of British Columbia, is situated at the south-eastern extremity of Vancouver's Island, and its approach, in a military sense, absolutely commanded by the Island of San Juan. Rosario Strait is commanded by islands already in possession of the United States. With San Juan in their hands, they could shut us out also from the use of the Canal de Haro, and, practically, from all communication by sea with our colonies on the mainland, as the northern passage *viâ* Queen Charlotte's Sound, is narrow, intricate, and perilous in the extreme. These considerations have earned for the island of San Juan the title of 'the Cronstadt of the Pacific.'

We now come to the arguments in support of the British and American claims. We find the British position fortified, to begin with, by a memorandum drawn up by Sir Richard Pakenham, the British plenipotentiary who negotiated the very treaty whose signification is now the question in dispute. He declares that the treaty was arranged without any reference having been made by the American Government to the islands in the channel between the continent and Vancouver's Island. True, it subsequently appeared that Mr. McLane, United States Minister in London, writing to Mr. Buchanan, the American Secretary of State, and negotiator of the treaty, said that the line about to be proposed by Her Majesty's Government would 'probably

bably be substantially to divide the territory by the extension of the line on the parallel of 49 degrees to the sea; that is to say, to the arm of the sea called Birch's Bay, thence by the Canal de Haro and Straits of Fuca to the ocean.' The Americans attribute great importance to this despatch; but what use did they make of it at the time it was written, at the time when the hydrographical knowledge of the region under partition was confessedly imperfect, and the accurate definition of the boundary was much to be desired? 'It is certain,' says Sir Richard Pakenham, 'that Mr. Buchanan signed the treaty with Mr. McLane's despatch before him, and yet that he made no mention whatever of the Canal de Haro as that through which the line of boundary would run, as understood by the United States Government.' We quote this passage, not to show that Mr. Buchanan was designedly entrapping Mr. Pakenham to accept words having a signification to which he would not have given his assent if he had understood it, but merely as evidence that the United States Government contemplated nothing more in 1846 than the establishment of a fair boundary, on the basis of obtaining all the mainland south of the 49th parallel, while we reserved all Vancouver's Island. It is only by virtue of the contention now set up by the United States that Mr. Buchanan can be accused of having stooped to overreach the British plenipotentiary. If he understood the hydrography of Fuca Straits, he cheated Mr. Pakenham. If he acted fairly to Mr. Pakenham, he had no fixed impression as to the direction the boundary-line would take among the islands, dividing the Canal de Haro from Rosario Strait. Proceeding on this hypothesis, it will be manifest that the treaty ought to be interpreted as prescribing a fair division of the islands which stud the channel to which it refers. A plea has been set up on behalf of America to the effect that the object of deflecting the boundary-line was merely to prevent it from cutting off a fragment of Vancouver's Island; therefore that we ought not to claim anything whatever beyond that one solid piece of land. But, first of all, this plea is manifestly inequitable. We reserved Vancouver's Island, and, in doing this, it is manifest that we also reserved those immediately adjacent insular appendages without which its possession would have been an element of weakness rather than of strength. Secondly, there is not a word in the treaty to support the idea that its language ought to be interpreted as giving us nothing but the one compact island specifically named. On the contrary, the language would be just as capable of bearing an exactly opposite interpretation, according to which we might claim that the United States ought to have nothing but the mainland all along

along Fuca Straits, leaving every islet, however near the mainland, in our possession.

A fair division of the minor islands, made without reference to the treaty, and merely on the basis of an understanding that England was to have Vancouver's Island, and America the mainland, would assuredly give us the Island of San Juan. That island, and many others in its immediate vicinity, are geologically fragments of Vancouver's Island, and not of the mainland. The island, whose mere value as so much territory is hardly worth consideration in this dispute, is useless to the United States, except for the purposes of offensive military operations against the British dominions. To us, as Lord Milton has pointed out, it is of priceless importance for the proper defence of our own territory, while altogether unavailable for hostile operations against the United States. It is difficult to imagine a stronger equitable claim on the island than these considerations give us. We can only want the island for our own protection, and could not use it for aggressive purposes. The United States can only want the island as a *point d'appui* for aggressive purposes, and could not render it serviceable for their own defence.

The correspondence that took place between Captain Prevost and Mr. Archibald Campbell during their attempt to agree upon a boundary, concerns itself mainly with the technical arguments on each side, and affords, together with the instructions issued by each Government to its own representative, a complete epitome of these arguments. On behalf of England it is maintained that, when the treaty was concluded in 1846, only one navigable channel was known to exist, viz., that known by the name of Rosario Strait. The Canal de Haro is alleged to be a channel only fit for steamers, and in endeavouring to show that it is in all respects as navigable a channel as Rosario Strait, Mr. Campbell seems driven to quote from an American hydrographical report dated as late as 1855, on which it is not improbable that the existence of the San Juan question as an international difficulty had some influence. In dealing with another technical point he was not ashamed to use the argument embodied in the following passage:—'Rosario Strait is a navigable channel, but it does not separate the continent from Vancouver's Island. In no part of its course does it touch upon the shore of either. It separates the islands of Lummi, Sinclair's, Cypress, Guemes, and Fidalgo on the east; from Orcas, Blakeley, Decatur, and Lopez islands on the west; but in no respect does it separate the continent from Vancouver's Island, and cannot therefore, in my opinion, be claimed, in accordance with the language of the treaty, as the channel therein referred to.'

Thus

Thus, if there had been one main channel twenty miles wide connecting the Gulf of Georgia with the Straits of Fuca, still if each shore were fringed with islands, Mr. Campbell's argument would have made it necessary to take the boundary-line inside them, within a half-mile or so either of the mainland or of Vancouver's Island, in order that it might pass through a channel washing one or other of the territories named in the treaty. It is impossible to read the passage we have quoted from Mr. Campbell's despatch without feeling that the argument it involves must have been invented to accommodate the facts, and would never have been heard of under a somewhat different conformation of the regions in dispute.

It would be tedious to follow the two commissioners through all their prolonged and fruitless diplomacy, but we may here record the fact that Captain Prevost, after vainly exhausting his arguments in endeavouring to convince Mr. Campbell that the Rosario Strait was the channel of the treaty, and after finding his own conviction to that effect entirely unshaken by the counter-arguments brought forward on the other side, proposed a compromise. He suggested that the whole intervening space between the mainland and Vancouver's Island should be treated, in laying down the boundary, as if it were one channel, and that the line should be taken as nearly along the middle of the whole space as the position of the minor islands would allow. This proposal, this very liberal proposal, which had the effect of offering the United States many islands to which they had no fair right, was declined curtly by Mr. Campbell, who wrote that he must decline 'any proposition which would require me to sacrifice any portion of the territory which I believe the treaty gives to the United States.' It will be seen that Mr. Campbell had profited by the lessons of the Maine and Oregon controversies, and comprehended the doctrine that all territory which at any time, or by any accident, any citizens of the United States had seized or claimed as subject to the sovereignty of the republic, was from that moment to be regarded as United States territory, the restoration of any part of which to its legitimate owners was to be treated as a cession.

The first settlement of the island of San Juan was effected by the Hudson's Bay Company, the island having been 'always considered to be and treated as within the jurisdiction of the Governor of Vancouver's Island.'* But about the year 1859 a few American squatters made their appearance, and their arrival was generally regarded as foreshadowing some ultimate designs.

* Lord Milton, p. 252.

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In June, 1859, a dispute arose between one of the squatters and the agents of the Hudson's Bay Company. The squatter shot a hog belonging to the Company. General Harney, the United States officer in command of troops in Washington Territory availed himself of the quarrel which arose out of this trifling incident to send a company of American troops to San Juan 'to afford adequate protection to American citizens, in their rights as such.' This aggressive step was taken altogether without reference to the Governor of Vancouver's Island. The Hudson's Bay agent remonstrated with Captain Pickett, the officer in charge, and warned him that the island was the property of the Hudson's Bay Company. This warning induced him to send for the 'Massachusetts,' an American man-of-war in the neighbourhood. Governor Douglas, of Vancouver's Island, hearing of these events, at once went to San Juan. Captain Pickett informed him that he was acting under orders—that he would prevent any inferior British force from landing, fight any equal force, and protest against the landing of any force superior to his own. We need not trace the correspondence that ensued between Captain Pickett and the British authorities. The tact and great self-control of Governor Douglas averted any actual outbreak of hostilities. Eventually he landed in a different part of the island from that occupied by the Americans a small force equal to that under Captain Pickett's orders, and thus established the joint occupation that has endured ever since. In accordance with the provisions of the treaty of Washington, the sovereignty of the island has been referred for arbitration to the German Emperor, and the cases prepared on each side have been for some time in his hands. It is very desirable that no decision should be given in this matter while the arbitration referred to the tribunal at Geneva is threatened with miscarriage. Should the Emperor give a decision in our favour, there would be every reason to fear that its reception by the Government of the United States would depend upon the fate of the arbitration at Geneva. Judging by the principles on which American diplomacy is regulated, it is but too probable that in the event of a collapse of the treaty, as far as it relates to the 'Alabama,' the United States would repudiate an arbitration in the San Juan case that failed to grant them the sovereignty of the island. On the other hand, the British Government would probably accept a decision unfavourable to itself, whatever might be the fate of the treaty. We stand, therefore, in the position of having everything to lose and nothing to gain by letting the Berlin arbitration proceed. If our Government have not taken steps to suspend it while the issue of the negotiations relating to the 'Alabama' arbitration is doubtful, they

they have shamefully imperiled interests it was their duty to guard.

The fate of San Juan, however, has excited but little public interest during the last few months. The incidents that have interrupted the progress of the arbitration at Geneva have thrown all other subjects of international speculation into the shade. Time has at last exposed, what circumstances for a while disguised, the true character of the Washington treaty. Our consent to that unfortunate instrument was obtained by the American Government in one of those propitious moments in which it has always been their good fortune to conclude their treaties with this country. An eager desire to secure the friendship of the United States, at almost any material sacrifice, had inspired Mr. Gladstone's Government with the idea of settling the 'Alabama' difficulty by giving up almost every question in dispute. Demands which successive Governments, both Conservative and Liberal, had ever since their first presentation persistently resisted as wholly unreasonable—which in some cases they had almost resented as insulting—he resolved to grant. The Washington Government was thus enabled to obtain the signature of Great Britain to a treaty which it almost dictated, and of which some of the most important passages were certainly framed in its own language. The precedents of history were followed out with melancholy exactitude. Over a long course of negotiation the diplomatists of Great Britain proved the justice of their case. But the more they strengthened their position by argument, the more the United States endeavoured to strengthen theirs by increasing the extravagance of their demands. Finally, at a moment when the contention of the United States was more unreasonable than at any previous period, Mr. Gladstone acceded to almost every claim that the Americans had made, and that this country had resisted in a long diplomatic battle, extending over nine years. American statesmen, at any rate, appreciate the lessons of history. They know that, however extravagant have been the demands made in former times by their Government on Great Britain, a period has always been reached when this country has been either frightened or wearied into acquiescence. It is not surprising that they relied, in dealing with the 'Alabama' question, on the recurrence of events in their old order.

Recent criticisms on the Washington treaty have been chiefly directed to the passages which bear on the vast indirect claims now advanced by the American Government. But the truth is, that even if the indirect claims had never been heard of, the treaty, regarded merely as a settlement of the 'Alabama' claims pure and simple, would still have involved an ignoble surrender on

on our part to unwarrantable pretensions on the part of America. This will be seen clearly enough if we cast back a glance at the long negotiations which the treaty of Washington was designed to close. Those negotiations extended over four distinct periods. The claims were first presented by Mr. C. F. Adams to Lord Russell in 1862. A long correspondence was devoted to their discussion in that year, but Lord Russell and Lord Clarendon, after Lord Palmerston's death, steadfastly disclaimed responsibility for the acts of the 'Alabama.' They refused to entertain the idea that arbitration on this subject was possible. Lord Russell expressed his readiness to agree to the appointment of a mixed commission to settle minor claims, but he refused to permit the introduction of those relating to the depredations of the 'Alabama.' With the correspondence that passed between Mr. Adams and Lord Clarendon in the winter of 1865, the first period of the negotiations may be said to have closed.

When Lord Derby's government came into power in 1866, negotiations were commenced afresh. The American claims were laid before Lord Stanley, and in a despatch written in November, an offer was made to the American Government which advanced considerably beyond that made by Lord Russell. Lord Stanley now expressed the readiness of the British Government to arbitrate upon the 'Alabama' claims, if the two governments could agree upon the questions to be referred for arbitration. Mr. Seward, however, now contended that the arbitration should include a reference of the question whether this country was justified in recognising the belligerent character of the Confederate States. Lord Stanley absolutely refused to make this question the subject of any arbitration whatever, and the negotiations again fell to the ground.

A third series was undertaken on the arrival in this country of Mr. Reverdy Johnson. It extended over the change of government in 1868, and was concluded under the auspices of Lord Clarendon. This time the British Government advanced beyond its previous concessions, and agreed, not indeed openly to arbitrate concerning the recognition of belligerent rights, but to arrange for the arbitration of the 'Alabama' claims on the basis of a tacit understanding that although we could not refer the question of belligerent rights to the arbitrators, the American Government might nevertheless still reserve their opinion that our conduct in that matter had been unjustifiable.* The American

* See despatch from Lord Stanley to Mr. Thornton of Oct. 21, 1868:—'In this conversation little was said as to the point on which the former negotiations broke off, namely, the claim made by the United States Government to raise before the arbitrator the question of the alleged premature recognition by Her Majesty's Government

rican Senate, however, refused to accept the convention signed on the basis of this and other concessions by Lord Clarendon, and the third period of the negotiations was closed by the refusal of Lord Clarendon to re-open the subject with Mr. Reverdy Johnson under these circumstances. The fourth period dates from the appointment of the Joint High Commission.

The appointment of that commission was in itself an exceedingly imprudent measure. It is true that the commission—as a commission on the 'Alabama' claims—was not actually proposed by the British Government, but the proposal which was made by the British Government for a commission to settle the fisheries dispute was practically an invitation to Mr. Fish to propose the reference of the 'Alabama' claims to the same body of diplomatists. Thus it may be asserted with substantial truth that Mr. Gladstone's Government is responsible for having re-opened the 'Alabama' controversy. The folly of such a course of action was extreme. The Government thus displayed an anxiety to conciliate the favour of the United States, that was certain to re-act on the American Government in such a way as to produce claims of a more extortionate kind than any previously put forward. As Lord Derby justly observed in the debate in the House of Lords on the 22nd of March last: 'A mission so sent out, with such unusual pomp and ceremony, was bound, under the penalty of making itself ridiculous, to conclude a treaty of some sort. It could not come back *re infectâ*, and obviously, when the other party to the negotiation is aware of that fact, you are not likely to make an advantageous bargain. So we have gone on from concession to concession.' Moreover, it might have been remembered that the rejection of the Reverdy Johnson treaty had been accompanied by the development of Mr. Sumner's views in the famous speech that first imputed to England a liability to pay the cost of some years of the civil war. True, this was the theory of a comparatively irresponsible though, on account of his connexion with an important committee of the Senate, an influential politician, but the Government here ought to have been awake to the danger that the new claim might sooner or later be taken up by the United States Government. The encroaching spirit, which that Government had already shown, should have taught British statesmen of common prudence that our only policy in reference to the 'Alabama' claims was to stand on the defensive, prepared to make concessions up to the advanced limits already defined, but to go no further. Unluckily, however, Lord Granville,—

Government of the Confederates as belligerents. I stated to Mr. Reverdy Johnson that we could not on that point depart from the position which we had taken up; but I saw no impossibility in so framing the reference as that by mutual consent, either tacit, or express, the difference might be avoided.'

or

or Mr. Gladstone, whom we suspect to have been the author of the idea,—fancied a time had come at which it would be possible to negotiate a treaty with the Americans which would please them without absolutely empowering them to sell up the British empire. To almost anything short of this he appears to have been ready to agree. During the Washington conferences Lord Granville stood behind the commissioners, ordering them by telegraph to concede and to submit, whenever they showed signs of resisting some demand rather more startling than usual. From first to last their proceedings seem to have been little more than a registration of the terms on which the American Government was willing to receive the submission of this country. If the Government of Mr. Gladstone had cared to maintain any decent show of insisting that the negotiations should be conducted on a system of reciprocity, they would have firmly persevered in requiring that arrangements should be made for obtaining an arbitration on our claims in respect of Fenian raids on Canada. Whatever complaints the Americans can make against us, for having shown unfriendly negligence in letting the 'Alabama' escape, we might bring complaints against them of an unfriendliness tenfold greater, shown in repeatedly permitting the organisation within their territory of regular military expeditions designed to make war upon the Queen's dominions. But the Fenian raid claims were given up by our Government for no better reason than because the American people were said to be resolved never to listen to these claims. The American people seem to be regarded by Mr. Gladstone's Government with mingled emotions of fear, and anxiety to please, which combine to render its claims tremulous in their diffidence; its concessions servile in their eagerness.

The commissioners, urged forward by the Foreign Office, hastened when the conferences opened to accumulate their peace offerings in a heap at the feet of the American negotiators. At the outset of their proceedings, they imparted a wholly new character to the treaty under preparation, by inserting, in accordance with Lord Granville's instructions, an apology for the escape of the 'Alabama.' Of course the theory of the treaty was that a future arbitration had to decide whether that escape carried with it any reproach to this country or not; but without the apology, say the defenders of the treaty, the American people would never have accepted it. It is odd that this excuse should be considered sufficient, because the treaty which we are thus supposed to have purchased by means of the apology, is in itself a concession—an enormous concession to the United States. We derive no advantage from it ourselves—none, at all events worth speaking of—except the hope that the United States may, under its

its influence, ultimately surrender an unjust claim against us. However, the apology was destined to be soon eclipsed by the three rules. American theories concerning the 'Alabama' had by this time matured so far that the United States Government was no longer content to submit the 'Alabama' claims to a free and unfettered arbitration. It insisted that artificial rules should be laid down for the guidance of the arbitrators, so that it should be rendered almost certain that under these rules, drawn up to suit the circumstances, England should be found liable to pay damages. The British Commissioners were startled by such an extravagant demand, and at first refused to entertain it. But subsequently, under the influence of telegrams from home, they agreed to the *ex post facto* rules. The arrangement exactly fell in with the views of the British Government. It might, perhaps, have shrunk from calling on Parliament to pay heavy damages voluntarily, in a matter where our culpability had never been acknowledged. But in its mania for truckling to the United States, it joyfully acceded to an agreement by which the defence of the country before a tribunal of arbitration would be embarrassed by artificial difficulties, and rendered unlikely to succeed. In an age when the use of strong language was more prevalent than at present, it would probably have been asserted that a country thus treated by its Government had been betrayed.

The treaty signed by Lord Ashburton in 1842, as we have already said, was described in the political controversies of its day as a capitulation. Surely the circumstances we have recalled in reference to the recent treaty, are enough to show that this treaty was no less a capitulation. In all our diplomacy with the United States, we seem to have been destined to capitulate in the end.

The three rules under which the treaty consents that the liability of Great Britain shall be decided are awkwardly drawn up, but their general significance is that a neutral Government is bound 'to use due diligence' to prevent the complete or partial preparation within its jurisdiction, of any vessels destined for hostile employment against any power with which it is at peace. Also to deny belligerents the use of its ports or waters, 'for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.' Under these rules, and on the assumption that their infringement renders a neutral liable to pay damages, we should undoubtedly have been liable to pay damages to the Confederate States, if they had achieved their independence; for men were recruited for the service of the Federal armies at Queenstown (see Lord Russell's despatches to Mr. Adams), and the United States made constant use of our ports

ports and waters for obtaining 'renewals and augmentations' of military supplies and arms. But it is worth while to observe that under these rules, if reasonable allowance is made for the occasional failure, even of 'due diligence' in enforcing the law, there is good ground for believing that the British Government would be able to defend itself before a tribunal of arbitration in respect of any claim for damages brought by the United States. Even in reference to the simplest of the direct claims advanced by that power, it will be found difficult, after an examination of the facts, to understand how a fair tribunal could decide that our conduct towards the successful belligerent during the American Civil War was such as to render us justly amenable to penalties. The anxieties of the present moment have a good deal overshadowed the incidents which have been supposed to connect this country with the proceedings of the Southern cruisers, but if only for the sake of correctly appreciating the spirit in which the new claim for consequential damages has been advanced, we should keep in view the fundamental arguments on which that superstructure has been raised.

The British Case supplies us with an able narrative of these incidents. Beside the American Case our own pleadings may appear weak to a hasty reader. They contain none of that exaggeration, forensic ingenuity, and misleading rhetoric by which the American Case is distinguished. This last may be compared to the speech of the counsel for the plaintiff in a breach of promise trial; the British Case, to the explanation which a cool statesman, conscious of being in the right, might give in Parliament in justification of some measure that had been unreasonably attacked. The British Case, however, is strong and satisfactory, even when taken as a defence against the fiery indictment of the Americans.

We have not space for a close analysis of the unfair reasoning —the simulation and dissimulation—of the American Case. But the long chapters relating to 'the unfriendly course pursued by Great Britain,' 'the duties which Great Britain as a neutral should have observed towards the United States,' and the acts 'wherein Great Britain failed to perform its duties as a neutral,' which are especially disfigured by these characteristics, are the less deserving of close criticism as being improperly conceived in principle. The friendliness or unfriendliness of Great Britain, her performance of neutral duties other than those connected with the Southern cruisers, are matters with which the Geneva tribunal cannot properly concern itself. In discussing them at unreasonable length, the authors of the American Case violate the spirit of the Washington treaty. In the British Case general questions are only discussed so far as may be absolutely necessary

necessary in explaining the policy pursued by Great Britain towards the cruisers. And the general principles thus laid down in the British Case concerning neutral duties as they affect the claims under arbitration, though not so concisely expressed as they might be, are nevertheless so well conceived that we are induced to quote them :—

'1. It is the duty of a neutral Government in all matters relating to the war to act impartially towards the belligerent powers, to concede to one what it concedes to the other; to refuse to one what it refuses to the other.

'2. This duty, inasmuch as it flows directly from the conception of neutrality, attends the relation of neutrality wherever it exists, and is not affected by considerations arising from the political relation which before the war the belligerents may have sustained to one another.

'3. Maritime war being carried on by hostilities on the high seas, and through the instrumentality (ordinarily) of vessels commissioned by public authority, a neutral power is bound to recognise, in matters relating to the war commissions issued by each belligerent, and captures made by each, to the same extent, and under the same conditions as it recognises commissions issued and captures made by the other.

'4. Where either belligerent is a community or body of persons not recognised by the neutral power as constituting a sovereign state, commissions issued by such belligerents are recognised as acts emanating, not, indeed, from a sovereign Government, but from a person or persons exercising *de facto* in relation to the war, the powers of a sovereign Government.'

With this exordium the British Case proceeds to record the leading facts of the great Southern struggle for independence. When the American Case deals with history, much circumlocution is employed to keep up the theory that from first to last the people of the Confederacy were 'insurgents;' that the war throughout was an 'insurrection;' that the members of the Southern Government were 'persons calling themselves' by this or that official title. In the British Case, on the other hand, transactions are described by their right names. The historical narrative, for instance, opens with the statement:—'In the year 1861 a civil war broke out in the United States.' It is astonishing how different an aspect is at once imparted to the policy of Great Britain by the use in this manner of honest phraseology in describing events, from that which it is made to wear when examined under the false light thrown upon it by the distorted language of the American writers.

As soon as the war began, the Southern leaders, finding their own ports blockaded by a naval force with which they were quite unable to cope, sought abroad for the means of creating a navy. The identity of their own language with ours, and commercial ties, naturally attracted their agents to this country. The

American firm of Fraser, Trenholm, and Co., was established at Liverpool. The American Case makes it a subject of bitter complaint against us that the firm was to all intents and purposes a branch of 'the insurgent treasury.' The complaint is childish. Could the British Government have hunted out, banished, or imprisoned private merchants trading within its territory because they did business with people with whom the United States were at war? The truth is, that the arrangements made by the Confederates for supplying money in England for any purposes connected with their interests during the war would have gone far to excuse the British Government, if it had been much less successful than on the whole it was, in guarding its neutrality. For after all, in spite of the exertions the Confederates made to circumvent our neutrality, and in spite of the weak ineffective character of the old Foreign Enlistment Act, which was the only weapon the British Government could employ against them, the only vessel which so far escaped the vigilance of this Government as to leave a British port prepared to become a Southern cruiser without going into a Southern port, and without undergoing seizure and trial, was the 'Alabama' herself. The American Case says:—

'The cruisers for whose acts the United States ask this tribunal to hold Great Britain responsible are (stating them in the order in which their cruises began), the "Sumter," the "Nashville," the "Florida," and her tenders; the "Clarence," the "Tacony," and the "Archer;" the "Alabama," and her tender the "Tuscaloosa;" the "Retribution," the "Georgia," the "Tallahasse, the "Chickamauga," and the "Shenandoah."'

Some of these vessels are now heard of for the first time as the subject of claims against the British Government; and the British Case, dealing only with those vessels in reference to which claims had been advanced during the 'Alabama' correspondence, does not contain a complete account of all the ships now named. But it does contain a complete account of the four principal cruisers, and the history of the others may be gathered sufficiently for our present purpose from the American Case itself. First, let us notice the more important vessels. 'Of the four vessels in respect of which alone,' says the British Case, 'the United States have up to this time made claims against Great Britain,' two, the 'Georgia' and the 'Shenandoah,' were built as merchant ships. The 'Shenandoah' was actually employed as a merchant ship, and bought abroad for the Confederate Government. The 'Georgia,' was built at Dumbarton, was cleared for a port in the West Indies, and though she was at once taken to French waters and there equipped for war, so well was the secret of her intended character kept, that the United States

States agents in this country could obtain no evidence against her till too late for use. The first communication made by Mr. Adams to Lord Russell on the subject of this vessel was made six days after she sailed. How can it be argued, therefore, that the British Government is responsible for her depredations, on the ground that it was guilty of negligence in letting her escape? In the case of the 'Florida,' that vessel after leaving this country was seized in the dominions of the Queen abroad, and was brought to trial, but at this time she was not a man-of-war at all. She was released by the court because no proof was forthcoming that she was even intended to become a man-of-war. The American Case describes her trial as a farce; but whether the prosecution was or was not conducted, by the Colonial authorities engaged, in a lukewarm spirit, at all events the ship entered a Confederate port, and there for the first time was fitted out for war.

The vessels made the subject of claims now for the first time were mostly blockade runners, or vessels which were unequivocally fitted out in Confederate ports, and in reference to which the theory that England is responsible for these depredations rests wholly on the hospitality they are alleged to have received in British ports. In reference to this hospitality, the charge of the United States is met by the reply that in the exercise of a strict neutrality we treated Southern and Northern vessels exactly alike. That, of course, is our offence in the estimation of the American people. We ought to have shown hospitality to the Federal ships alone, and to have assisted them in capturing Southern cruisers as pirates. But such theories, although unhappily they cannot be overlooked, and cannot therefore be described as beneath notice, are certainly beneath serious attention.

The general deduction, therefore, from a survey of the facts relating to the cruisers is this.—The only offence committed by Great Britain was that in one solitary instance during four years she failed in guarding her neutrality. Just before the 'Alabama' slipped unexpectedly away, Mr. Adams, who up to that time had merely been enabled to submit vague rumours and unsubstantial evidence against her, did certainly forward to the British Government evidence which, when examined by the law officers, was found to be sufficient to justify her detention. But the legal opinion came just a day too late. The ship had flown. In many other cases the British Government acted with great promptitude, and almost with illegal zeal for the benefit of the United States. The British Case shows:—

'That, beside the "Florida" and the "Alabama," many other ships were believed and asserted by Mr. Adams to be fitting out in British

ports, for the purpose of carrying on war against the United States, and were made the subject of representations to Her Majesty's Government.

'That in every case, without exception, the allegations of Mr. Adams were promptly and carefully investigated; that in the greater number of cases Mr. Adams proved to be mistaken, the suspected ships being merely merchant ships, built and fitted out with a view to a special employment, and not for war; that in all cases as to which reasonable evidence could be obtained, the suspected vessels were seized, and proceedings instituted for the condemnation of them; that four were thus seized—the "Alexandra," the two rams, and the "Canton," or "Pampero"—and were prevented from being used for belligerent purposes, and one of them (the "Alexandra") having been seized in England and restored by the verdict of a jury, was afterwards seized again in a British colony.'

In fact, whatever may have been the sympathies of private individuals in this country during the war, it is certain that the British Government pushed to the verge of partizanship with the North, its determination to prevent the South from making use, for warlike operations, of the maratime resources of Great Britain. And yet because in one instance its vigilance broke down, because one vessel out of a great number that the Southern Government was struggling to obtain got away in spite of us, the American Government is not ashamed to importune us for damages, and to come before the world claiming that we ought equitably to reimburse it for the expenses of a large part of the war! The old story is repeated. The more we yield to America the more is expected of us. By constantly courting that power, we encourage it in behaving towards us with an arrogance which grows more and more difficult to endure. Each concession on our part provokes a fresh demand, and every sacrifice we make has the effect of augmenting instead of diminishing the sum total of sacrifice claimed at our hands.

The penalty we incur for having yielded to the United States Government, so far as to have consented that the original 'Alabama' claims should be referred to arbitration, is that we are now called upon to meet fresh claims which may amount to some hundreds of millions sterling. Much discussion has been devoted to the question whether the indirect claims now advanced were understood by the American Commissioners at the time the treaty was signed to be included in that instrument. We need not travel over this discussion, nor follow those writers who have busied themselves, in the interests of peace, in trying to show to the United States honourable paths along which they might retreat from their present untenable position. Efforts have been made in this way to prove that the treaty itself was the

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'amicable settlement' mentioned in one of the protocols as calculated, if it could be arranged, to bar all further prosecution of the indirect claims. But in this matter we must adopt the American view. It is evident that the American Commissioners, when they spoke of an amicable settlement, contemplated an arrangement by which Great Britain should, without even taking her case to arbitration, have accepted the worst consequences that an arbitration could have inflicted upon her. With what intention the American Commissioners made this proposal it is difficult to understand. It assumed either that Great Britain had previously for years been dishonestly refusing the American people compensation which it knew to be their due, or that it had finally sunk so low that it might be induced through fear to submit to a claim it knew to be unjust. Certainly it would appear that American statesmen do not refrain from making proposals to this country from any dread of rousing its indignation, if the policy suggested be ignominious. But it would be waste of time to discuss at length the intentions which actuated the American negotiators during the conferences at Washington. The American Case formally calls upon the arbitrators to declare that this country ought equitably to reimburse the United States for the expenses entailed upon them by the prolongation of the war after the battle of Gettysburg. Whatever was intended by the negotiators of the treaty, the intention of the authors of the Case—that is to say, of the American Government—is perfectly clear. It is to obtain, if possible, a decision, that we are equitably bound to pay the consequential damages; and if any sane Englishman imagines that, having obtained such a decision, the American Government would be content to leave it a dead letter without adding up the claims and producing a definite sum total in dollars, he must certainly have studied American policy, if at all, to very little purpose. The theory that the indirect claims mean nothing, that they are really introduced for the sake of their moral effect, is almost unworthy of examination. If it were sound, we should be none the less enabled to object to devices for producing a moral effect on the minds of the arbitrators, by means of pleadings irrelevant to the question at issue, but the argument is altogether delusive. If the arbitrators admitted what the American Case asks them to admit, that we ought in equity to pay certain charges not yet estimated, they could not, in the discharge of their appointed functions, do otherwise than proceed to assess those charges, or refer them for assessment to another tribunal.

The claim for the indirect damages lies before us; and this country will deserve the worst consequences that can befall it if it consents to any course of action which is based upon the belief

belief that the claim can be in any way ignored. In making that claim the American Government has clearly overstepped the rights conferred upon it by the treaty. Whether Mr. Gladstone is justified in declaring that the treaty is not ambiguous, or whether its clumsily constructed sentences are ambiguous, one thing is certain, even Mr. Gladstone's Government, in advising the Queen to ratify the treaty, was incapable of intending to submit to arbitration the question whether Great Britain ought to pay half the cost of the American war. Starting from this indisputable position, we venture to say it is absurd to contend that a great nation can be entrapped by adroit diplomatists into signing away, without intending to do so, sums that would involve national disgrace. The reference of the indirect claims is not sanctioned under the treaty, because this country never consciously consented to any such reference, and because treaties cannot be applied to purposes of unforeseen extortion like acceptances in the hands of a money lender. They are nothing if they are not the record of a mutual agreement between the states in whose names they are signed.

On the part of the United States it is contended that the court of arbitration at Geneva is the proper tribunal to determine whether the indirect claims are admissible under the treaty. But to refute this view it is only necessary to apply the principle on which it is based to an imaginary case. Suppose the American Government had gone to the Geneva tribunal declaring that the only compensation it would really accept would be the deposition of the Queen, and the entrance of this country into the American Union as a new state. Any person of sane mind will see, not only that such a claim would be inadmissible under the treaty, but that we could not possibly allow the tribunal to arbitrate concerning its admissibility. Under no circumstances could we consent to stand the risk of an arbitration, however slight, in a matter of so much importance. There is but one theory that can explain in a rational manner the nature and functions of a court of arbitration. Two disputants narrow their differences by negotiation to a specific issue, or a series of specific issues. They agree to refer those issues—those, not any others—to a third party. The jurisdiction thus conferred on the third party is essentially a jurisdiction *ad hoc*. The arbitrators have no more authority to determine a new dispute arising subsequently to their appointment—whether it concerns the limits of their jurisdiction or a wholly independent matter—than to determine any old dispute standing apart from those they were appointed to consider. Their authority was only called into existence by mutual agreement; it can only continue in existence by mutual agreement.

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To conceive an effectual decision by arbitrators we must begin by conceiving two suitors ready to receive that decision; pledged to one another, agreeing with one another, that in reference to the matter before the arbitrators they would abide by that decision.

As we write negotiations are in progress, the character of which is concealed from us, and the issue of which it is impossible to foresee. All that we know of them is that they have begun badly. When at last the Government was roused by the press and the country from a lethargy which it has yet to explain, and when it grew aware that something had to be done in consequence of the unfair manœuvre that the United States had attempted, Lord Granville, on the 3rd of February, sent a despatch to General Schenck, which was described in the Queen's Speech as a 'friendly communication,' and the contents of which were understood to be as nearly colourless as the circumstances would allow. Timid to the verge of servility at a time when honour and policy would have alike dictated some boldness and precision of tone, the Government seems to have done nothing more than feebly suggest that the United States was asking too much in asking us to give the arbitrators at Geneva power to treat us as a conquered nation. As a matter of course the United States Government maintained the position it had already assumed. Lord Granville's despatch practically encouraged that Government to persevere in the course on which it had entered. We do not say that he could easily have persuaded it to draw back. The lessons of fifty years are not to be unlearned in a day. We have displayed towards the United States such miserable weakness and servility in the past, that now—or whenever we may ultimately be compelled to change our tone with them, as sooner or later it is inevitable that we must—we may have to face some disagreeable contingencies before convincing them that we are in earnest. But very ordinary sagacity should have shown the Government that indecisive remonstrances, however sweetened with sugary phrases, were absurdly out of place when we had to deal with such an extraordinary aggression as that attempted by the American Government. The course before us was to say plainly that, in signing the Washington treaty, we meant to concede the most liberal terms we could agree to, compatibly with the maintenance of our own honour, but that we never contemplated the discussion before arbitrators, nor imagined that the American Government contemplated advancing demands of so extravagant a nature as those they have put forward. Those demands, we should have explained, constituted so serious an infringement of the understanding embodied in the treaty, that we could only regard the proceedings before the arbitrators as suspended

suspended until the American Government might choose to conform to the stipulations therein laid down. An explanation of this kind would have required no reply of an argumentative character. We should have known at once whether to regard the arbitration as still pending, or the treaty of Washington as null and void by reason of the irremediable infringement of its provisions by America.*

What, on the other hand, is the painful position in which we are placed by the feeble and inadequate diplomacy of the Government? We are drifting on, in spite of Lord Derby's warnings, from one concession to another. Our attitude, which at this moment should have been bold, honourable, and intelligible, is equivocal, and all but ignominious. Sooner or later, at a less favourable opportunity than that which we have allowed to let slip, we must speak out courageously, or submit to concessions that will earn for us the contempt of the civilised world. The momentary success of the Government in persuading credulous admirers that the danger by which we were menaced is passing away, is due merely to a policy of procrastination that has temporarily averted an evil day. Deaf to the warnings of the past, the Cabinet seems still to cling to the belief that our difficulties with the United States can yet be surmounted by means of a policy of conciliation; and indeed whether it is still possible that ultimate measures of common sense, involving the abandonment of this foolish and feeble policy, may avert the dangers by which we are at present encompassed, is a question to which, without knowing as yet how far the Government has already committed us, we should shrink from giving a reply. But taking a broad view of the relations that have subsisted between this country and the United States for the last fifty years, we must confess that politicians, who still look hopefully to a future depending on the continued influence of conciliation in our further negotiations with that Power, display a confidence which no experience will teach, and which borders on downright folly.

* The advice which Lord Westbury gave to the Government upon this point in the debate in the House of Lords on March 22nd is so excellent that it deserves to be recorded here:—'What I beg the Government to do is to take a firm stand upon the truth of what was understood on both sides at the time, and not to be beguiled into a question concerning the construction of a treaty, for it is idle to discuss the construction of a document which you contend does not contain your real sentiments, and does not tally with the belief and understanding which you were induced by the other side to entertain. Insist that no question as to the construction of the treaty on this matter shall go to the arbitrators; for there is something superior to language—the question what was intended by us, and what was represented to us to be intended by them. Have that point raised and decided before you begin quibbling as to the interpretation of the language.'

ART. VII.—1. *History of the Life and Times of James Madison.* By William C. Rives. Volume I. Boston, 1859.

2. *Letters and Other Writings of James Madison, Fourth President of the United States.* In four volumes. Published by Order of Congress. Philadelphia, 1867.

THE two books before us form a valuable contribution to a period of history too little known to the majority of educated Englishmen. We in this country have, for the most part, what may be called an intermittent knowledge of American history. The romance which surrounded the early settlers, he fate of Gilbert, the adventures of Smith, and the landing of the Pilgrim Fathers, are almost as familiar to Englishmen as the burning of Cranmer, or the trial of Strafford. Then, for most readers, the stream of American history loses itself in the earth, and re-appears at Bunker's Hill. But there is another side of the subject, fraught with the deepest interest for students of constitutional history, which has hardly received due attention. The history of the United States is pre-eminently the history of the growth of institutions. We there see going on before our eyes those processes which, among the long-settled nations of the Old World, can only be known by their faintly-marked traces in the past. The history of the American colonies before the Declaration of Independence shows, as no other history does, the actual birth and growth of representative Government. There can be few more attractive subjects of study than the various steps by which the different colonies took up the institutions of the mother-country, and adapted them to their special wants. Yet even this fails to equal in interest the later period of American constitutional history. Most English readers, we fear, feel that the history of the contest for independence ends with the final triumph of the colonists. It would be nearer the truth to regard the war as a prelude to one of the most deeply interesting chapters which the constitutional history of any nation can lay before us. The formation of the Federal Constitution was, beyond doubt, the greatest and most arduous political experiment, and, if we measure the difficulties surmounted, may be fairly called the most successful one, which history records. In this, too, as in all great political changes, the interest does not end with the formal conclusion of the contest. The process by which the Federal Constitution was fashioned and determined really lasted through the presidencies of Washington and Adams, and only ended with the triumph of the Democrats under Jefferson.

If